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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,816	09/11/2003	David B. Lantz	BOR03 P-104	5260

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EXAMINER

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ART UNIT PAPER NUMBER

3653

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/659,816
Filing Date: September 11, 2003
Appellant(s): LANTZ ET AL.

George A. Smith, Jr.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11/25/05 appealing from the Office action mailed 6/23/05.

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(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

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The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 28-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wike, Jr. et al (US 6,427,915 B1) in view of Hoar (US 5,131,499). Wike discloses a checkout counter with bagwell (60), extendible supports (56, 58 and 70) which are designed to be moved over the bagwell based upon implementation of either a checkout or a self-checkout configuration. Wike further discloses that the checkout apparatus has a front module (32) and a rear module (28).

Wike does not expressly disclose, but Hoar discloses using a rotating bagwell (14) having multiple positions for bags in a checkout counter (10). Note also that Hoar's device has a table (20) on which it is supported, and which moves in a horizontal plane (i.e., horizontally), in a rotating manner, from a position located adjacent a clerk to a position adjacent a customer. See figures 2 and 3 of Hoar. Wike does not expressly disclose, but Hoar further discloses a rotating bag turret (14) with bag supports (34), said turret also adjusting vertically to various heights so as to accommodate different conveyor surface locations. See Hoar, col. 2, line 49-col. 3, line 19.

Wike and Hoar are considered to be analogous art because they all concern checkout counter apparatus'

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At the time of the invention, it would have been obvious to one of ordinary skill in the art to have used the height-adjustable rotating bagwell support of Hoar in place of Wike's stationary, non-rotating bag supports.

The suggestion/motivation would have been to "significantly speed and facilitate the store checkout procedure and provide other noteworthy benefits..." as well as to make the height of the bagwell adjust to the height of the conveyor surface. See Hoar, col. 1, lines 36-39. Note also that Wike's extensions (56), (58) and (70) suggest a movable cover over the bagwell area and that Wike's bagwell (60) suggests a need for increasing throughput by allowing more items to be bagged quickly and efficiently. This need is met by Hoar's rotating bagwell support which allows a user to simply rotate the support to an empty bag when a particular bag position is full.

Further, one ordinarily skilled would recognize that in view of the use of the extensible conveyor (56, 58 and 70) by Wike and the teaching of Hoar for adjusting the height of the bagwell, it would have been obvious to incorporate an adjustable height feature in Wike's bagwell to allow the bagwell to be adequately stowed below Wike's extensible conveyor portion.

(10) Response to Argument

Applicant asserts that one ordinarily skilled in the art would not have combined Wike and Hoar to obtain Applicant's claimed checkout system as described in Claims 32-34 and 40-42. Applicant argues that "Wike's bag supports are already below the counter level, at the optimum bag loading height, and at that height they would not interfere with the take-away belt mechanism..."

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Wike clearly illustrates in figures 12, 13 and 15 a bag holder comprising two posts extending perpendicularly from a backboard movable from a vertical position, as shown in figure 13, to a folded position, as shown in figures 12 and 15. Note in particular, movable shelf (70) which is placed over the bagwell (62) in figure 15. Note also extendible conveyor (58) extended over this same bagwell in figure 12. See also col. 14, lines 22-46. Note also col. 14, lines 17-21, which mentions that element (70a), illustrated in figure 3, is a hinge which allows shelf (70) to be flipped from covering one bagwell (60) to the other (62). The vertical support (72), as described in col. 13, lines 66 and 67, and illustrated in figures 1 and 5, connects the shelf (70) to lower support surface (74). Now turn to figure 13, which shows the backboard with a hinge structure similar to element (70a) that connects it with vertical support (72). It appears from figure 13, for example, that if it were to remain vertical, the backboard would interfere with shelf (70) when it is flipped over so as to cover bagwell (62) because the sides of shelf (70) would interfere with the top surface of said backboard. It is then apparent from figure 13 and the prior cited passages in col. 13 and 14 that figures 12 and 15 both show this backboard, on which the bag holding posts are connected, in the folded position so as to accommodate the movement of either the conveyor extension (58) or the movable shelf (70) over bagwell (62). Wike therefore provides a disclosure of providing clearance for the placement of the extension or the shelf over the bagwell.

Hoar, provides teaching for replacing a stationary singular bag holder with a rotating turret with several bag holders. The suggestion/motivation is to "significantly speed and facilitate the store checkout procedure and provide other noteworthy

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benefits..." as well as to make the height of the bagwell adjust to the height of the conveyor surface. See Hoar, col. 1, lines 36-39. Hoar discloses an adjustment mechanism at col. 2, lines 49-68 and col. 3, lines 1-19. It is therefore clear that one ordinarily skilled in the art would have found motivation to switch the bag holder of Wike for that of Hoar so as to increase efficiency. Additionally, in light of Wike's illustration of a folding backboard to provide clearance for the placement of either the extendible conveyor or the movable shelf over the bagging area, Hoar's teaching of adjusting the height of the turret would have provided motivation to one ordinarily skilled in the art to have adjusted the turret out of the way of the extendible conveyor or the movable shelf. Hoar further provides motivation for adjusting the turret up to a height reaching the surface of the counter-top on either the rear module or the front module upon the removal of either the extendible conveyor or the shelf. See again Hoar, col. 1, lines 36-39.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

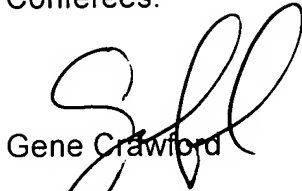
Respectfully submitted,




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